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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,501	03/03/2008	Peter Wengler	20828/0205159-US0	7940
7278	7590	04/23/2009	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			MAI, HUY KIM	
			ART UNIT	PAPER NUMBER
			2873	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/562,501	Applicant(s) WENGLER, PETER	
	Examiner Huy K. Mai	Art Unit 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/23/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on Dec. 23, 2005 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Claim Objections

2. Claims 10, 16, 17 and 20 are objected to because of the following informalities: The limitations in claim 10 should be clarified; otherwise, the context in claim does not draw the preamble “a device for determining an ametropia of an optical system”. Similarly, the context in claim 16 does not draw the preamble “a method for determining an ametropia of an optical system”.

The limitations in claims 16 should also be clarified; otherwise claim being indefinite because of treatment. Treat what?

It appears the dependency of claim 20 should be –19--; otherwise, the phrase “the further adjusting” (claim 20, line 2) has no antecedent basis.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Guirao et al (2002/0140902).

The limitations in claims 10-16 are shown in Guirao et al's Figs. 2 and 7, pages 4-10. Guirao et al discloses a device for determining an ametropia of an optical system including an eye comprising means of determination of ocular refraction from wavefront aberration data and design of optimum customized correction wherein the device includes a measurement and control unit for determining an objective aberration, wherein the subject sees through system a Snellen chart to predict the subjective refraction (see [0021] to [0023]) via an optical element including a plurality of optical properties; thus the controllable optical elements including a plurality of optical properties are inherently included in the Guirao et al's device. Guirao et al further discloses the measurement and control unit outputs "the optimal wave aberration of Figs 2 or 3, step 218 and the required refractive correction of Figs. 2 or 3, step 220, the latter can be supplied to a lens fabrication, surgical correction,... or image simulation system 722, which can be prepare a spectacle lens, a contact lens, or an intraocular lens to correct the eye's wave aberration, control a surgical technique upon the eye E to correct the aberration (see [0120]).

Regarding claim 17-20, it should be noted that although claims 17-20 "method claims", the method steps consist of the broad step of "adjusting" etc and therefore this step would be inherently satisfied by the apparatus of the reference.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Mai whose telephone number is (571) 272-2334. The examiner can normally be reached on M-F (8:00 a.m.-4:30 p.m.).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on (571) 272-2333. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1562.

/Huy Mai/

Primary Examiner, Art Unit 2873

HM

April 22, 2009